

State Procurement Office
Procurement of Health & Human Services

Getting from the Notice of Award
to an Executed Contract
for Health and Human Services
Pursuant to Chapter 103F, HRS

March 30, 2005

A Little Background

How the State Buys What it Needs

Health & Human Services

Competitive Purchases of Services

What is Chapter 103F? Putting Things in Perspective

Chapter 103D , HRS	Chapter 103F , HRS
The Procurement Code	Purchases of Health and Human Services
Goods, services and construction	Health and human services
Applies to: State & county agencies	Applies to: State agencies

What Do We Mean by Health and Human Services

"Health and human services" means services to communities, families, or individuals which are intended to maintain or improve health or social well-being through methods including, but not limited to:

- (a) Assessment, treatment, diagnosis, prevention, and education services provided directly to a target clientele; or
- (b) Insurance coverage for assessment, treatment, diagnosis, prevention, and education services to be provided to a target clientele.

There are 5 Methods of Procuring Health and Human Services

- Competitive (RFP)
- Restrictive (Sole Source)
- Treatment
- Small Purchase
 - (Beware of parceling)
- Crisis
 - (The clients, not yours)

About the State Procurement Office (SPO)

- The Procurement Code
(Chapter 103D, HRS)
- Purchases of Health & Human Services
(Chapter 103F, HRS)
- Inventory Management
- Surplus Property

SPO Acting Administrator is Ruth Yamaguchi

The SPO Website

<http://www.spo.hawaii.gov/>

Click “Health and Human Services...”

SPO Website

- Awards
- E-procurement
- Procurement of Goods, Services and Construction, Chapter 103D, HRS
- Act 52/2003 and 216/2004 Guidance
- **Health and Human Services, Ch.103F...**
- pCard
- State/County Public Notices
- Travel Services
- Procurement Institute
- Procurement Notices

Notice of Award

Statement of Findings and Decision

- “Sets the stage.”
- Sample format is available on the website.

Requirements

- Indicate applicant(s) awarded.
- Attach copy of the scoresheet for the applicant to whom the notice is sent.

Seeing the Light at the End of the Tunnel

- You have FINALLY finished with evaluation of all the proposals and the Statements of Findings and Decision have been mailed.
- You think the worst is over, but then...

You Get a
Protest!

Don't Panic...
This too, shall pass...

The Protest Process

Protest Process

General Procedures

- You can resolve the protest at any time by mutual agreement using any of the allowable methods for resolution.
- The process once begun, does not have to go all the way to the end if a mutual agreement is made.

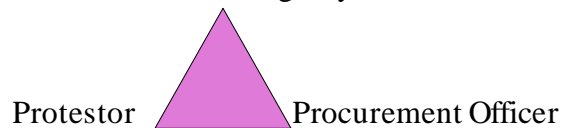
Allowable Methods for Resolving a Protest

- Amending or canceling the request for proposals;
- Initiating a new process to award the contract by
 - reopening the evaluation process or
 - issuing a new procurement (RFP);
- If a contract has been executed, terminating the contract or declaring the contract null and void from the time of its award;
- Affirming the purchasing agency's decision; or
- Dismissing the protestor's protest.

Protest Process
General Procedures (continued)

- The head of the purchasing agency acts as an impartial party during this process.
- Opposing parties must let the other know before communicating with the head of the purchasing agency about the merits of the protest.

Head of State Agency



Protest Process
General Procedures (continued)

- Once a notice of protest is filed, all activity toward making the award is suspended.
- No execution of a contract.
- No delivery of services in anticipation of execution of a contract.
- No negotiations or discussions with a provider regarding an intended award.

The Protest Process: Step 1 Informal Request for Explanation

- Advice from others who have been through the process: respond quickly.
- Listen and explain.
- Advise potential protestor of the submittal deadline to file a notice of protest, where to get form SPO-H-801, who it must be sent to, etc.

The Protest Process: Step 2 Notice of Protest

- Filed by the protestor.
- Due within 5 days of the postmark of the statement of Findings and Decision.
- Contains a brief description of the basis of the protest.
- Form SPO-H-801

The Protest Process: Step 3

Scheduling and Settlement Conference

- Must be scheduled within 3 days of receipt or the notice of protest by the head of the State agency or designee.
- Can be held in person, by phone or by other electronic medium.
- Purpose is to see if there is possibility of coming to a mutual agreement; or if not
- The head of purchasing agency establishes the schedule for the remaining steps of the process.
- Form SPO-H-802

Protest Process: Step 4

Scheduling Order

- Sets deadlines for each step in the process.
- Everything up to the written decision should be completed within 10 days, if practicable.
- Head of State agency has discretion to provide more time.
- Order is issued same day as the conference or the next day.
- Form SPO-H-803

The Protest Process: Steps 5 & 6 Requests for Clarification and Responses

- Whether this step will occur is determined at the settlement and scheduling conference.
- The requests and responses are due in accordance with the Scheduling Order.
- Forms SPO-H-804 and SPO-H-805

Responses to Requests for Clarification

- Read Section 3-148-502, HAR!
- The protestor may request access the purchasing agency's relevant procurement records.
- The purchasing agency shall provide access to the extent the information is required or permitted to be withheld by law.
- If there is a dispute that cannot be resolved in good faith, the head of the purchasing agency may resolve it "...as fairly as possible in light of all the circumstances..."

The Protest Process: Step 7 Formal Protest

- Filed by Protestor (Form-SPO-H-806)
- Due date in accordance with scheduling order.
- Contains:
 - a detailed statement of the reasons for the protest;
 - Supporting exhibits, evidence, documents; and
 - Additional relevant information that would help the head of the State agency make a decision.

The Protest Process: Step 8 Response

- Filed by procurement officer.
- Deadline per scheduling order.
- Be clear and objective.
- Be factual.
- Address (all) the issues raised by the protestor.
- Form SPO-H-807

The Protest Process: Step 9 Reply

- Filed by protestor.
- Due per scheduling order.
- Contains:
 - Additional reasons/arguments;
 - Additional evidence/materials; or
 - Additional information that would help the head of the State agency make a decision.
- Form SPO-H-808

The Protest Process: Step 10 Decision by Head of State Agency

- Due date is per scheduling order.
- Contains:
 - Statement of action to be taken/resolution to the protest;
 - Detailed statement of reasons for decision including factual findings;
 - Statement of protestor's right to request reconsideration
 - Statement that the decision is final and conclusive, unless a timely request for reconsideration is made.

Request for Reconsideration

Will it ever end?

Request for Reconsideration: 3 Steps

1. Request filed by protestor (Form SPO-H-810)

- Detailed statement of factual and legal grounds for reconsideration based on materials presented to the head of the State agency; and
- Copies of scheduling order, protest, response, reply, decision and supporting materials submitted during initial protest procedure.

2. Reply by State agency

- Based on materials submitted to head of State agency during initial protest period.

Request for Reconsideration: Final Step Decision by the Chief Procurement Officer

- **Contains:**
 - Decision to uphold the head of the State agency or reopen the protest and award an appropriate remedy (from the allowable methods for resolving a protest);
 - A detailed statement of the reason for the decision, including factual findings.

Discussions with Applicants after Notice of Award

**Negotiating for a More Advantageous
Contract**

Allowable Purpose of Discussions

To negotiate a more
advantageous contract for the
state.

What is Negotiable

- Contractual terms and conditions not specifically discussed in the request for proposals (RFP); and
- Contractual terms and conditions which are substantially the same/do not constitute a ***material change to the proposal.***

Material Change to a Contract

Any change that would negatively
affect how advantageously a proposal
was rated during evaluation.

Conducting the Negotiations

Establish:

- Procedures
 - Consistency in how discussions are conducted among providers.
 - Criteria for face-to-face negotiations vs. over the phone/by mail.
- Schedules
 - Timing.

Procedures in Conducting Negotiations

Ahead of time,

- What issues do you want to address with each provider? Compare them.
- Have an agenda and a script.
- One person or more at the negotiations?
- Let the provider know the topics you'd like to discuss so they can be prepared.

Timely Execution of Contracts

- Make this top priority.
- It is **parceling** to make a small purchase in anticipation of execution of a contract.
- Inadequate planning by the purchasing agency is not sufficient justification for an exemption.
- You can extend an existing contract for the same service per 3-149-301, HAR, if the reason is continuity of services.

Contracting Issues
and
Getting Contracts Approved as to Form and
Executed

Blair Goto
Deputy Attorney General

Questions?

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